

THE CALIFORNIA CORPORATIONS COMMISSIONER HEREBY ADOPTS
THE FOLLOWING CHANGES IN THE REGULATIONS UNDER THE
CORPORATE SECURITIES LAW OF 1968
AS SET FORTH IN CHAPTER 3, TITLE 10,
CALIFORNIA CODE OF REGULATIONS
EFFECTIVE: MARCH 27, 2002

1. Adopt Section 260.204.9 to read as follows:

Rule 260.204.9. Exemption for Certain Investment Advisers with Fewer than 15 Clients.

(a) An exemption from the provisions of Section 25230 of the Code is hereby granted, as being necessary and appropriate in the public interest and for the protection of investors, to any person who (1) does not hold itself out generally to the public as an investment adviser, (2) has fewer than 15 clients, (3) is exempt from registration under the federal Investment Advisers Act of 1940, as amended, by virtue of Section 203(b)(3) of that act, and (4) either (i) has assets under management, as defined in subsection (b)(2), of not less than \$25,000,000 or (ii) provides investment advice to only venture capital companies, as defined in subsection (b)(3).

(b) For purposes of this rule, the following definitions shall apply:

(1) Client shall have the same meaning as defined by the Securities and Exchange Commission under the rule adopted pursuant to Section 222(d) of the federal Investment Advisers Act of 1940, as amended.

(2) "Assets under management" means the securities with respect to which an investment adviser and its affiliated persons provide continuous and regular supervisory or management services; provided, that in the case of securities managed for an entity which is excluded from the definition of investment company by the exclusion provided in

Section 3(c)(1) or Section 3(c)(7) of the federal Investment Company Act of 1940, as amended, assets under management shall also include any amount payable to such entity pursuant to a firm agreement or similar binding commitment pursuant to which a person has agreed to acquire an interest in, or make capital contributions to, the entity upon demand of such entity.

(3) An entity is a “venture capital company” if, on at least one occasion during the annual period commencing with the date of its initial capitalization, and on at least one occasion during each annual period thereafter, at least fifty percent (50%) of its assets (other than short-term investments pending long-term commitment or distribution to investors), valued at cost, are venture capital investments, defined in subsection (b)(4) or derivative investments described in subsection (b)(5).

(4) A “venture capital investment” is an acquisition of securities in an operating company as to which the investment adviser, the entity advised by the investment adviser, or an affiliated person of either has or obtains management rights as defined in subsection (b)(6).

(5) An acquisition of securities is a “derivative investment” if it is acquired by a venture capital company in the ordinary course of its business in exchange for an existing venture capital investment either (i) upon the exercise or conversion of the existing venture capital investment or (ii) in connection with a public offering of securities or the merger or reorganization of the operating company to which the existing venture capital investment relates.

(6) “Management rights” means the right, obtained contractually or through ownership of securities, either through one person alone or in conjunction with one or more

persons acting together or through an affiliated person, to substantially participate in, to substantially influence the conduct of, or to provide (or offer to provide) significant guidance and counsel concerning, the management, operations or business objectives of the operating company in which the venture capital investment is made.

(7) An “operating company” means an entity that is primarily engaged, directly or through a majority owned subsidiary or subsidiaries, in the production or sale (including any research or development) of a product or service other than the management or investment of capital, but shall not include an individual or sole proprietorship.

(8) "Affiliated person" means a person that controls, is controlled by, or is under common control with the other specified persons. Control means possessing directly or indirectly, the power to direct or cause the direction of management and policies.

Note: Authority cited: Section 25204 and 25610, Corporations Code. Reference: Section 25230, Corporations Code.

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